

DEPARTMENT OF FOOD AND AGRICULTURE**William (Bill) J. Lyons, Secretary**

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**NOTICE OF A PUBLIC HEARING TO CONSIDER AMENDMENTS
TO THE POOLING PLAN FOR MARKET MILK**

Notice is hereby given that the California Department of Food and Agriculture is calling a public hearing. The hearing will consider amendments to the ability of producers and handlers to enter and leave the pool as provided in the Pooling Plan for Market Milk (Pooling Plan), as well as a technical amendment.

Hearing Dates, Places and Times - The hearing will be held on November 3, 2003, at the Holiday Inn Capitol Plaza, 300 J Street, Sacramento, in the California Room beginning at 9:00 a.m.

The hearing is being called pursuant to Division 21, Part 3, Chapter 2, Sections 61991 through 62032 and Chapter 3, Section 62717 of the Food and Agricultural Code (FAC), as implemented by Title 3, Section 2080.2 of the California Code of Regulations (3 CCR 2080.2).

Petition Received by the Department - The Department of Food and Agriculture received a petition on October 1, 2003 from the Alliance of Western Milk Producers. The petition proposes amendments to the Pooling Plan. Specifically, the amendments would limit the ability of:

- producers shipping to handlers with no Class 1 or mandatory Class 2 usage to enter or leave the pool, and
- handlers with no Class 1 or mandatory Class 2 usage to enter or leave the pool

Currently, such producers and handlers can enter or leave the pool on a monthly basis. The amendments would limit these producers' and handlers' ability to enter or leave the pool to an annual basis.

The petition for a hearing to amend the Pooling Plan is considered pursuant to FAC Sections 62031-62079, Section 62717 and Section 2080.2 of the California Code of Regulations (3 CCR 2080.2). A copy of this petition can be obtained by contacting the Dairy Marketing Branch at (916) 341-5988 or by accessing the Department's web site at www.cdfa.ca.gov/dairy. From the dairy home page, click on *Announcements, Hearings and Statutes* then *Dairy Hearing Matrix* and then go to #4, *Producer and Handler Depooling*.

The Secretary may call a hearing to adopt, amend or terminate the Pooling Plan on the Secretary's own motion (FAC Sections 62032 and 62717) or upon receipt of a petition from any interested party (3 CCR 2080.2). The hearing will be conducted in accordance with the required procedures (3 CCR 2080.4).

Call of Hearing - The hearing will consider the petitioner's proposal to amend Sections 106 and 114 of the Pooling Plan in effect on August 1, 2003, to address the ability of producers shipping to handlers with no Class 1 or mandatory Class 2 usage, and handlers with no Class 1 or mandatory Class 2 usage to enter or leave the pool.

In addition, the hearing will consider proposals to amend other sections within Article I of the Pooling Plan that deal with the ability of producers and handlers to enter or leave the pool (FAC Sections 62707 (h) and (j), 62711 and 62712).

On his own motion, the Secretary will propose a technical amendment to the Pooling Plan. This amendment will deal with advance payments to producers (Section 1001 of the Pooling Plan).

The hearing will also consider the factual basis, evidence and the legal authority upon which to make any and/or all of the proposed amendments to the Plans.

Interested parties should refer both to the statutes establishing and governing operation of the Pooling Plan set out in FAC Chapters 3 and 3.5, Part 3 of Division 21, and to the declarations, purposes, goals and requirements of the Milk Pooling Program as codified in those Chapters referenced above and FAC Sections 62700, 62701, 62702 and 62702.1. Because Pooling and Pricing are interrelated (FAC Sections 61347, 61810 and 62504), interested parties should also review the declarations, purposes, goals and requirements of the Milk Stabilization Program as codified in FAC Chapter 2 and FAC Sections 62062, and 62063, as well as the pricing criteria established in FAC Article 9, Chapter 2, of Part 3, Division 21.

Alternative Proposals - Interested parties are encouraged to submit alternative proposals that are within the call of the hearing. Proposals should be e-mailed to dairy@cdfa.ca.gov, mailed to 1220 N Street, Sacramento, CA 95814 or faxed to (916) 341-6697. Proposals must be received by the Department's Dairy Marketing Branch by 4:00 p.m. on October 20, 2003. Also by October 20, 2003, the Department will release copies of its proposed technical amendment.

At the hearing the Department will receive testimony and evidence, both oral and written. Interested parties who wish to introduce testimony and/or exhibits shall provide the Hearing Officer at the hearing with six (6) copies of such documents for the official record. Additional copies for use by hearing participants are always appreciated.

Final Decisions Resulting from the Hearing - The final decisions resulting from this hearing will be issued in accordance with the procedures and criteria contained in Chapter 2 and/or Chapter 3 and 3.5 of Division 21 of the FAC, as necessary.

The Department's decision will also include consideration of the following:

- whether prices will insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable;
- whether prices, including the prices of components of milk, established by the Secretary for the various classes of market milk bear a reasonable and sound economic relationship to each other;
- whether the amendments would be in accord with all the purposes, policies, and standards contained in Sections 61801, 61802, 61805, 61806, 61807, 62074.5, 62076, and 62077;
- whether amendments to the Pooling Plan are necessary to effectuate the purposes of Chapters 3 and 3.5 of Part 3 of Division 21, in particular Sections 62707, 62711 and 62712 of the FAC;
- whether proposed Pooling Plan amendments would result in payments to producers of amounts in accordance with FAC Section 62750;

- whether proposed Pooling Plan amendments are substantive in nature thereby requiring a statewide referendum in accordance with FAC Section 62717;
- whether the amendments would be in accord with all policies, purposes, goals and standards contained in Sections 62700, 62701, 62702, 62712, and 62714;

Ex Parte Communications Prohibited - From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, the Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Public Workshop - To assist interested persons in preparing for this hearing, a public workshop will be held on October 27, 2003 at the Holiday Inn Capitol Plaza, 300 J Street, Sacramento, in the Grenada Hermosa Room beginning at 9:00 a.m. At this workshop, interested persons can review and discuss all proposals submitted with Department staff and other interested parties. The Department will supply background and analysis of alternative proposals, as well as a discussion of its proposed technical amendment. Discussion during the workshop will not be part of the official hearing record.

The Department's entire hearing exhibit for this hearing will be available for public inspection at the Sacramento office of the Dairy Marketing Branch on October 27, 2003. The office is located at 530 J Street, Suite 150.

If any interested party has questions regarding the call of this hearing or needs assistance in developing language for a proposal, please contact John Lee at (916) 341-5901 or Dave Ikari at (916) 341-5988.

All interested persons are invited to attend and participate in both the public workshop and the hearing. Interested parties are encouraged to present any data or information that is relevant to the consideration of the issues raised in the call of this hearing.

Persons with Disabilities: The Department of Food and Agriculture wishes to ensure that all members of the public have access to all public meetings. If you require a special accommodation, please contact Cheryl Gilbertson at dairy@cdfa.ca.gov, (916) 341-5988 or TDD (800) 735-0193 at least five days prior to the workshop or hearing date.

Original signed by: _____
 Kelly Krug, Director
 Division of Marketing Services

Date October 7, 2003